

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.17 of 2024

Sri Kartik Chakraborty

.....Petitioner(s);

Versus

Smt. Santa Chakraborty & another

.....Respondent(s)

For Petitioner(s) : Mr. Debalay Bhattacharya, Sr. Advocate,
Mr. Samar Das, Advocate.

For Respondent(s) : Mr. Kundan Pandey, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

25/04/2024

Heard Mr. Debalay Bhattacharya, learned senior counsel for the petitioner and Mr. Kundan Pandey, learned counsel for the respondent No.1.

2. Notice was issued upon the respondents. Respondent No.1-Wife has only appeared through learned counsel Mr. Kundan Pandey. Respondent No.2-the alleged adulterer, whose name was deleted by the impugned order dated 02.08.2022, has not entered appearance.

3. The petitioner approached this Court after a sufficient lapse of time to assail the impugned order dated 02.08.2022 passed by learned Family Court, West Tripura, Agartala in T.S. (Divorce) 167/2021 whereby the name of respondent No.2 was deleted. Petitioner has asserted that there are categorical statements in the plaint that the respondent No.1 has been voluntarily living and having sexual intercourse with respondent No.2. She has also treated the petitioner with cruelty. She has also tried to extort money through blackmailing. She has been living in desertion for more than two years. The marriage between the parties was performed on 02.07.2001 as per Hindu rights

and customs and there is a male child aged 15 years staying with the petitioner-father.

4. Mr. Debalay Bhattacharya, learned senior counsel for the petitioner, also drew the attention of the Court to other averments made in the plaint that earlier respondent No.1 had gone missing and a GD entry No.07 was made before the Bishalgarh Women Police Station on 11.10.2018. Averments have also been made that respondent No.1 informed the police that she would be living with respondent No.2 and marry him after taking lawful separation. Therefore, it is submitted that the deletion of respondent No.2 by the learned Family Court was not correct in the eye of law.

5. Mr. Kundan Pandey, learned counsel for the respondent No.1, is not in a position to dispute the averments made in the plaint as to the allegations of adultery by the respondent No.1 with the respondent No.2, but he submits that the petitioner has not furnished any explanation for the delay in assailing the impugned order dated 02.08.2022 in the instant petition in the year 2024. The examination of the petitioner's witness has been concluded. Defendant has submitted the examination-in-chief of two of his witnesses, who are to be cross-examined. Any impleadment of respondent No.2 at this stage would further delay the trial which would be against the mandate of the Hindu Marriage Act, 1955 and the Family Courts Act, 1984 which stipulate expeditious disposal of matrimonial suits.

6. I have considered the submission of learned counsel for the parties. The case of the petitioner is based upon grounds of adultery, cruelty and desertion under Section 13(1)(i), 13(1)(i-a) and 13(1)(i-b) of the Hindu

Marriage Act, 1955. Allegations of adultery which is stigmatic in nature could not be entertained unless the person against whom such adultery is alleged is also a party to the lis. In fact the adjudication of the matrimonial dispute on the grounds of adultery would not be proper in the absence of the alleged adulterer. Therefore, the learned Court was not right in deleting the respondent No.2. There is a significant delay which remains unexplained, but in the larger interest of justice, this Court feels that since the Trial has not yet concluded and it is at the stage of evidence of the defendant, it would be proper to implead the respondent No.2 so that the lis is properly adjudicated on all grounds raised by the petitioner and contested by the respondent-wife. As such, the impugned order is set aside.

7. Learned Family Court, West Tripura, Agartala shall add the respondent No.2 as a party in the suit. Since the suit is of the year 2021, expeditious steps be taken by the petitioner to re-examine his witnesses upon appearance of the respondent No.2. In either case if the respondent No.2 chooses to appear or otherwise, the trial be concluded within a period of 3(three) months after valid service of notice upon respondent No.2. Both the petitioner and the respondents would produce their witnesses, if necessary, for examination within this time.

8. The instant petition is disposed of with the aforesaid observations and directions. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

Pijush/